

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DONG HUI CHEN, XIAOYAN ZHONG, *and all
other persons similarly situated,*

Plaintiffs,

ORDER

21-CV-1382 (MKB) (JMW)

v.

THAI GREENLEAF RESTAURANT CORP., *d/b/a
Thai Green Leaf*, XIAOGUANG LIN, *a/k/a Xiao
Guang Lin*, XIAOKAI LIN, *a/k/a Xiao Kai Lin*,
HENGKENG LIN, *a/k/a Heng Keng Lin*, *a/k/a Kenny
Lin*, YIMEI LIN, *a/k/a Yi Mei Lin*, WEN CHEN,
a/k/a Chen Wen, and DAN WEN,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Dong Hui Chen commenced the above-captioned putative class action on March 16, 2021 against Thai Greenleaf Restaurant Corp., doing business as Thai Green Leaf; Thai Green Leaf Inc., doing business as Thai Green Leaf; Xiaoguang Lin, also known as Xiao Guang Lin; Xiaokai Lin, also known as Xiao Kai Lin; Hengkeng Lin, also known as Heng Keng Lin and Kenny Lin; Yimei Lin, also known as Yi Mei Lin; Wen Chen, also known as Chen Wen; Dan Wen; and Xiurong Zhang, also known as Xiu Rong Zhang.¹ (Compl., Docket Entry No. 1.) Plaintiff alleged violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and the New York Labor Law, §§ 190 *et seq.* and 650 *et seq.* (“NYLL”), arising from his 2020 employment at Thai Green Leaf Restaurant. (*See generally id.*)

¹ On March 23, 2022, Plaintiff dismissed claims against Thai Green Leaf Inc., d/b/a Thai Green Leaf, and Xiurong Zhang, also known as Xiu Rong Zhang, who were subsequently terminated from the case. (*See Notice of Voluntary Dismissal*, Docket Entry No. 32.)

On May 13, 2022, Plaintiff moved to amend the Complaint pursuant to Rule 15(a), seeking to (1) add Plaintiff Xiaoyan Zhong, (2) remove the dismissed Defendants from the Complaint; (3) assert FLSA and NYLL claims against Greenleaf Restaurant Inc., doing business as Thai Green Leaf, and Feng Zhu Chen as successors to Thai Greenleaf Restaurant Corp., (4) assert fraudulent transfer claims against all Defendants, and (5) remove irrelevant causes of action.² Defendants opposed the motion.³ On December 12, 2022, the Court referred Plaintiff's motion to Magistrate Judge James M. Wicks for a report and recommendation.⁴ (Order dated Dec. 12, 2022.) By report and recommendation dated December 13, 2022, Judge Wicks recommended that the Court grant Plaintiff's requests to (1) add Xiaoyan Zhang as a Plaintiff, (2) remove Defendants Thai Green Leaf Inc. and Xiurong Zhang, (3) assert FLSA and NYLL claims against Greenleaf Restaurant Inc. and Feng Zhu Chen as successor defendants, and (4) remove any irrelevant causes of action (the "R&R"). (R&R 18–19.) Judge Wicks recommended that the Court deny Plaintiff's request to assert a fraudulent transfer claim against all Defendants. (*Id.* at 19.)

No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject,

² (*See* Pl.'s Mot. to Amend/Correct/Suppl. the Compl. ("Pl.'s Mot."), Docket Entry No. 34; Mem. in Supp. of Pl.'s Mot. ("Pl.'s Mem."), Docket No. 34-4; Pl.'s Aff./Decl. in Supp. of Pl.'s Mot., Docket Entry No. 37.)

³ (*See* Defs.' Aff./Decl. in Opp'n to Pl.'s Mot., Docket Entry No. 36; Defs.' Mem. in Opp'n ("Defs.' Mem."), Docket Entry No. 36-1.)

⁴ On June 28, 2022, Judge Wicks held a motion hearing on Plaintiff's motion to amend. (*See* Pl.'s Mot.; Minute Order dated June 28, 2022, Docket Entry No. 38.) Judge Wicks heard argument by both parties and reserved decision. (Minute Order dated June 28, 2022.)

or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

For the foregoing reasons, the Court adopts the R&R and grants Plaintiff’s motion in part and denies it in part. The Court grants Plaintiff leave to file an Amended Complaint that (1) adds

Xiaoyan Zhang as a Plaintiff, (2) removes Defendants Thai Green Leaf Inc. and Xiurong Zhang, (3) asserts FLSA and NYLL claims against Greenleaf Restaurant Inc. and Feng Zhu Chen as successor Defendants, and (4) removes any irrelevant causes of action. The Court denies Plaintiff's request to assert a fraudulent transfer claim.

Dated: March 6, 2023
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge